

EX PARTE OR LATE FILED

DrinkerBiddle&Reath  
LLP

Timothy R. Hughes  
202-842-8895  
timothy.hughes@dbr.com

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APR - 2 2003

April 2, 2003

**BY HAND DELIVERY**

Federal Communications Commission  
Office of Secretary

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Vistronix, Inc.  
236 Massachusetts Avenue, NE  
Suite 110  
Washington, DC 20002

Re: Alascom Petition for Waiver – WC Docket No. 03-18  
**Ex Parte**

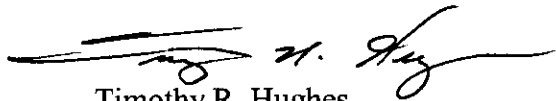
Dear Secretary Dortch:

On behalf of General Communication, Inc. ("GCI"), please find enclosed three copies of an *ex parte* letter from Joe D. Edge to Jeffrey H. Dygert dated April 1, 2003 to include in the public record in WC Docket No. 03-18.

Please date-stamp and return one of the enclosed copies to us, via our messenger.

Please call me at (202) 842-8895 with any questions or concerns regarding this submission.

Sincerely,

  
Timothy R. Hughes

Enclosures

cc: Jeffrey H. Dygert  
Deputy Division Chief, Pricing Policy Division  
Wireline Competition Bureau  
(by electronic mail)

Qualex International  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554  
(by electronic mail)

Not a public record *013*  
4/2/03

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1849

April 1, 2003

**EX PARTE**

**BY ELECTRONIC MAIL AND FIRST CLASS MAIL**

Jeffrey H. Dygert  
Deputy Division Chief, Pricing Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
Room 5-A223  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: Alascom Petition for Waiver  
WC Docket No. 03-18

Dear Mr. Dygert:

As counsel to General Communications, Inc. ("GCI"), I am writing to express my concern regarding the manner in which Alascom, Inc. ("Alascom") has responded to the Commission's request for information regarding Alascom's Cost Allocation Plan ("CAP"), the associated CAP model(s), and supporting documentation in the above-referenced proceeding. As evidenced by the attached email sent from Alascom to the Commission and GCI on Friday, March 28, 2003 (Exhibit 1), Alascom has failed to respond to your request for information and unduly delayed the production of a proper response. Of even more concern is Alascom's narrowing of the Commission's inquiry.

On Wednesday, March 26, 2003, representatives from Alascom, AT&T, GCI and the Commission participated in a conference call to discuss the release of certain documentation requested by GCI pursuant to the Freedom of Information Act ("FOIA"). The documentation requested by GCI includes the following:

1. Any and all versions of the "Cost Allocation Plan for the Separation of Bush and Non-Bush Costs" (the "CAP") used by Alascom, Inc., its parent company, AT&T Corp., or any former owner of Alascom, Inc. to formulate and/or support Alascom's Tariff FCC No. 11 and/or any of Alascom's annual rate revisions to Tariff 11;
2. Any and all versions of any economic models used or relied upon by Alascom to formulate and/or support Alascom's Tariff 11, any of Alascom's annual rate revisions to Tariff 11, or the CAP;
3. Any and all input data used to populate, formulate, or run the CAP or any input data used in any economic model supporting the CAP; and

Jeffrey H. Dygert

April 1, 2003

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4. The materials listed in Appendix A, attached to GCI's FOIA request, which included versions of the CAP submitted to the Commission in 1994 and 1995, as well as documentation provided to the Commission in support of the CAP during 1995.

A copy of GCI's FOIA request is attached hereto as Exhibit 2.

At the close of our discussions last Wednesday, the Commission tasked Alascom with reviewing relevant materials and providing the Commission with the following: (1) the rationale for non-disclosure of the materials requested by GCI in its FOIA request, taking into account the fact that certain of the materials date from as far back as 1994; (2) the vintage of the last data set used to populate and run the CAP and, if Alascom opposed release to GCI subject to a protective order, an explanation for such opposition; (3) the date when the most recent data set for the CAP was developed; and (4) if Alascom continued to oppose the release of certain data pursuant to protective order, what vintage of data would Alascom agree could be released under a protective order. During the conference call, GCI stated that the utility of Alascom's response could only be assessed if Alascom also provided a list of the materials it has submitted to the Commission relating to the CAP and the CAP model, as well as a list of the materials Alascom provided to its experts relating to the CAP and the CAP model in the context of the this proceeding. We understood that this would be provided. The Commission also invited Alascom to supplement the record in this proceeding with any valid legal arguments militating against disclosure of the requested materials pursuant to a protective order. The Commission requested that Alascom respond in full to its queries on or before Friday, March 28, 2003.

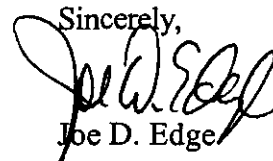
On the afternoon of March 28th, Alascom sent an email to the Commission and GCI stating that its response "to the request that Alascom report to the staff its position on providing CAP-related circa 1994-1995 data to GCI under a protective order" would be delayed because Alascom and AT&T "want to make as thorough a response as possible to the staff in connection with this important subject." Alascom further stated that it "intends to accept the staff's invitation to supplement the record of the waiver request proceeding by providing its dispositive answer to the question posed by the staff and, in addition, offer detailed justification and citations for it." Alascom indicated that it would supplement the record "probably at the end of next week."

Beyond unilaterally granting itself a one-week extension of time (and further delaying resolution of this proceeding), Alascom has mischaracterized, and thus, significantly narrowed, the nature of the Commission's requests for information. The Commission did not ask Alascom merely to "report to the staff its position on providing

Jeffrey H. Dygert  
April 1, 2003  
Page 3

CAP-related circa 1994-1995 data to GCI under a protective order.” Alascom already has voiced its position that it does not wish to disclose any data to GCI. Indeed, the email from Alascom’s counsel reiterates the likelihood that “Alascom will not agree to release such highly sensitive data to its primary competitor, GCI.” Despite Alascom’s attempt to narrow its response to the Commission’s inquiries, the questions posed by the Commission remain. These are the questions to which Alascom must respond. Absent detailed responses to these questions, Alascom continues to hinder the Commission’s efforts to satisfactorily work towards resolution of the parties’ disputes concerning disclosure of information, and denies the Commission and interested parties the ability to assess the very basis for Alascom’s waiver petition.

Please call me at (202) 842-8809 with any questions or concerns regarding this submission.

Sincerely,  
  
Joe D. Edge

JDE

Attachments

cc: Charles R. Naftalin  
Holly R. Smith  
Holland & Knight, LLP  
2099 Pennsylvania Avenue, N.W.  
Suite 100  
Washington, D.C. 20006  
(via electronic mail and regular mail)

Judith A. Nitsche, FCC (via electronic mail)  
Julie Saulnie (via electronic mail)

**Hughes, Timothy R.**

---

**From:** Tina Pidgeon [TPidgeon@gci.com]  
**Sent:** Friday, March 28, 2003 2:49 PM  
**To:** 'hughestr@dbi.com'  
**Subject:** FW: Alascom preliminary response to the question asked on Wednesday, March 26, 2003

-----Original Message-----

**From:** cnaftalin@hklaw.com  
**To:** jsaulnie@fcc.gov; edgejd@dbi.com; TPidgeon@gci.com  
**Cc:** jdygert@fcc.gov; jnitsche@fcc.gov; rcourier@att.com; hrsmith@HKLAW.COM  
**Sent:** 3/28/03 10:11 AM  
**Subject:** Alascom preliminary response to the question asked on Wednesday, March 26, 2003

Dear All:

This e-mail message is in response to the request that Alascom report to the staff its position on providing CAP-related circa 1994-1995 data to GCI under a protective order.

Yesterday, management of Alascom, AT&T, their counsel and consultants held a conference call during which there was a thorough and detailed discussion of the staff's question concerning the circa 1994-1995 data. It is my sense that Alascom will not agree to release such highly sensitive data to its primary competitor, GCI. However, the parties to that conference telephone call want to make as thorough a response as possible to the staff in connection with this important subject. Therefore, additional internal research connected to those data is underway. Alascom intends to accept the staff's invitation to supplement the record of the waiver request proceeding by providing its dispositive answer to the question posed by the staff and, in addition, offer detailed justification and citations for it. We expect to so supplement the record in a few days, probably at the end of next week.

Alascom thanks the staff for its continuing attention and support. It remains committed to making its best efforts to resolve this situation in a way that would be satisfactory for all concerned.

Thank you, Charlie

Charles R. Naftalin  
Holland & Knight LLP  
2099 Pennsylvania Avenue, NW  
Suite 100  
Washington, DC 20006-6801  
Tel (202) 457-7040  
Fax (202) 955-5564  
cnaftalin@hklaw.com

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DrinkerBiddle&Shanley LLP  
PRINCETON  
FLORHAM PARK

February 26, 2003

**BY HAND DELIVERY AND ELECTRONIC MAIL**

Managing Director  
Attention: FOIA Officer  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 1-A835  
Washington, D.C. 20554

RE: Freedom of Information Act Request

Dear Sir / Madam:

As legal counsel to General Communication, Inc. ("GCI"), Drinker Biddle & Reath, LLP hereby requests certain records from the Federal Communications Commission ("Commission") under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and the regulations implementing the Act, 47 C.F.R. §§ 0.441-70. Specifically, GCI requests copies of the following documents in the Commission's possession:

1. Any and all versions of the "Cost Allocation Plan for the Separation of Bush and Non-Bush Costs" ("CAP") used by Alascom, Inc., its parent company, AT&T Corp., or any former owner of Alascom, Inc. (hereinafter "Alascom") to formulate and/or support Alascom's Tariff FCC No. 11 ("Tariff 11") and/or any of Alascom's annual rate revisions to Tariff 11<sup>1</sup>;
2. Any and all versions of any economic models used or relied upon by Alascom to formulate and/or support Alascom's Tariff 11, any of Alascom's annual rate revisions to Tariff 11, or the CAP;
3. Any and all input data used to populate, formulate, or run the CAP or any input data used in any economic model supporting the CAP; and
4. The materials listed in Appendix A, attached hereto.

<sup>1</sup> Alascom originally filed its CAP on August 29, 1994. After the Commission determined the CAP to be deficient, Alascom filed a revised CAP on July 3, 1995. Alascom subsequently filed Tariff FCC No. 11, Transmittal No. 790 on September 22, 1995. Alascom then filed a revised CAP on November 13, 1995. On December 14, 1995, Alascom filed Transmittal No. 797 to revise the rates in its Tariff FCC No. 11 to reflect the November 13, 1995 revisions to the CAP. See Alascom, Inc. Tariff FCC No. 11, Transmittal No. 790, Order, 11 FCC Rcd 3703-05 (Com. Car. Bur. 1995).

Attention: FOIA Officer  
February 26, 2003  
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This request includes any handwritten, printed, typed, photographed, phone-or-tape recorded or graphic matter, however otherwise produced or reproduced, computer data, computer diskettes, e-mail and computer hard drive memory.

Pursuant to 47 C.F.R. § 0.461(b)(2) and 47 C.F.R. § 0.467, Drinker Biddle & Reath agrees to be responsible for the reasonable costs (up to a maximum of \$1,000.00) of locating and reproducing the requested documents.

If this request is denied in whole or in part, please explain the justification for such a decision. To the extent that any documents are withheld pursuant to a FOIA exemption, please explain the application of the exemption to each withheld document. Please release the segregable portion of any otherwise exempt material. We reserve the right to appeal the Commission's decision to withhold any information.

In order to assist your office in processing GCI's request, certain background information will be helpful. As a general matter, the instant FOIA request concerns Alascom's Tariff 11 and the materials relied upon by Alascom in formulating and supporting the tariff. Alascom's Tariff 11 filing requirement was borne of a long-standing Alaska market structure proceeding, the end result of which was that Alascom would provide origination and termination of long distance traffic to Alaska pursuant to tariff.<sup>2</sup> In addition to filing a tariff to be revised annually, the Commission required that Alascom develop a Cost Allocation Plan (the "CAP") to be used to calculate the rates under which Alascom would provide its Tariff 11 services.<sup>3</sup> Pursuant to Commission and Alaska Federal-State Joint Board ("Joint Board") directives, the rates for Tariff 11 services were to be cost-based and revised annually to reflect current costs.

When Alascom provided the CAP to the Commission in 1994 and 1995, it designated portions of the CAP and supporting materials as "confidential" under 47 C.F.R. § 0.459. On November 2, 1995, GCI filed a FOIA request seeking *inter alia* the CAP and all supporting economic models and input data. In response, the Common Carrier Bureau granted in part and denied in part GCI's FOIA request, and the Commission ultimately concluded that certain documents should be withheld under

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<sup>2</sup> Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States of Alaska, Hawaii, Puerto Rico and the Virgin Islands; Final Recommended Decision, 9 FCC Rcd 2197 (Jt. Bd. 1993) ("Final Recommended Decision"); Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States of Alaska, Hawaii, Puerto Rico, and the Virgin Islands, Memorandum Opinion and Order, 9 FCC Rcd 3023 (1994) ("Market Structure Order").

<sup>3</sup> See Market Structure Order.

Attention: FOIA Officer  
February 26, 2003  
Page 3

Exemption 4 of the FOIA.<sup>4</sup> Exemption 4 permits withholding of "commercial or financial information obtained from a person and privileged or confidential."<sup>5</sup> However, the Commission suggested that the requested information might be provided to GCI under a protective order.<sup>6</sup>

There are compelling reasons for disclosure of the CAP, its underlying economic model, and any related input data. To begin, Tariff 11 has been the subject of considerable controversy since 1995. In response to a petition by GCI, the Commission suspended Alascom's initial Tariff 11 filing more than seven years ago and instituted an investigation of the tariff.<sup>7</sup> Every subsequent annual revision of Tariff 11 filed by Alascom also has been suspended and made subject to the Commission's pending investigation. Recently, Alascom refused to make its required annual revision to Tariff 11. Instead, well after the mandated filing date had passed, Alascom filed a Petition for Waiver of the Commission's Rules Regarding its Annual Tariff F.C.C. No. 11 ("Waiver Petition").<sup>8</sup> By its Waiver Petition, Alascom requested that the Commission excuse it from filing annual revisions to Tariff 11. In the Waiver Petition proceeding, Alascom has submitted expert testimony in support of its request for relief from filing annual revisions to Tariff 11. The expert statements rely primarily on the CAP and the economic model underlying the CAP, yet these statements provide outside parties only a glimpse of the workings of the CAP. Thus, the CAP remains a mystery despite the fact that it is used to calculate the Tariff 11 rates under investigation and despite the fact that the CAP is the focus of Alascom's Waiver Petition.

Neither Exemption 4 nor any other FOIA exemption supports the withholding of the CAP and supporting materials from disclosure. In 1995, Alascom claimed that the materials submitted as "confidential" contained "location specific demand and cost data from which competitors could determine Alascom's margins and allow them to develop and price competitive service offerings."<sup>9</sup> Alascom further stated that the "detailed cost

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<sup>4</sup> In the Matter of General Communications, Inc.: on Request for Inspection of Records, Memorandum Opinion and Order, 12 FCC Rcd 8484 (1997).

<sup>5</sup> 5 U.S.C. § 552(b)(4).

<sup>6</sup> Id. at 8488.

<sup>7</sup> Alascom, Inc. Tariff F.C.C. No. 11, Transmittal No. 790, Order, 11 FCC Rcd 3703 (Com. Car. Bur. 1995).

<sup>8</sup> Alascom, Inc. Request for Waiver of Commission Rule and Orders Regarding Annual Tariff Revision, WC Docket No. 03-18.

<sup>9</sup> See Letter from Brian W. Masterson to Tom Quail, Common Carrier Bureau, October 30, 1995.

Attention: FOIA Officer

February 26, 2003

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and demand data would permit competitors to determine patterns of resource allocation and strategic Alascom initiatives.”<sup>10</sup> At the time, GCI argued that the disclosure of the requested materials did not pose a competitive threat to Alascom’s business. GCI continues to believe that the CAP and the underlying economic model are not competitively sensitive. Regardless, to the extent that the Commission previously concluded that the CAP would not be released for this reason, nearly eight years have passed since Alascom first submitted the CAP to the Commission. Alascom itself now characterizes the cost and demand data for which it once sought protection as stale and dated. Specifically, according to Alascom’s Waiver Petition in WC Docket No. 03-18, the CAP itself now is obsolete due to changes in the general marketplace and the nature of the traffic involved.<sup>11</sup> Alascom’s pleading states that the data “hard-coded into the CAP” is “increasing[ly] stale with the passage of time . . . .”<sup>12</sup> Simply put, the data requested by GCI could not be used by a rival business to compete with Alascom.

The CAP and its underlying data are not (and never were) competitively sensitive. Given the passage of time since Alascom first filed Tariff 11 and Alascom’s concession that the CAP and its underlying data are “stale,” the competitive concerns that Alascom cited in support of protecting the CAP under Exemption 4 of the FOIA now are moot. Accordingly, GCI should be granted full access to the materials requested above. However, in lieu of a FOIA production, GCI would be willing to receive the requested materials subject to a protective order of the type already crafted by the Commission (and executed by parties) on January 21, 2003 in WC Docket No. 03-18.<sup>13</sup> A copy of that protective order is attached hereto.

As a courtesy, a copy of the instant FOIA request will be provided to Alascom through its counsel in the Waiver Petition proceeding.

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<sup>10</sup> Id.

<sup>11</sup> See Alascom’s Petition for Waiver, Alascom, Inc. Request for Waiver of Commission Rule and Orders Regarding Annual Tariff Revision, WC Docket No. 03-18, filed Jan. 7, 2003.

<sup>12</sup> Id. at 11.

<sup>13</sup> On review of GCI’s appeal of the Common Carrier Bureau’s partial denial of GCI’s 1995 FOIA request, the Commission suggested that the requested information might be provided to GCI under a protective order. Specifically, the Commission stated that the Bureau’s FOIA determination “did not address the issue of possible discretionary disclosure of this information under a protective order.” In the Matter of General Communications, Inc.: on Request for Inspection of Records, Memorandum Opinion and Order, 12 FCC Rcd 8484, 8488 (1997).

Attention: FOIA Officer  
February 26, 2003  
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We look forward to your response to GCI's FOIA request within twenty (20) business days, as required by statute. Please contact me by telephone, mail or e-mail with any questions or concerns regarding this request. My telephone number is (202) 842-8895, my mailing address is 1500 K Street, Suite 1100, Washington, D.C. 20005-1209, and my email address is [hughestr@dbr.com](mailto:hughestr@dbr.com). Thank you in advance for your assistance.

Sincerely yours,



Timothy R. Hughes

TRH

Original and 2 copies

cc: Charles R. Naftalin  
Holland & Knight LLP  
2099 Pennsylvania Avenue N.W.  
Suite 100  
Washington, DC 20006-6801

Tamara L. Preiss, FCC (via e-mail)  
Jeffrey Dygert, FCC (via e-mail)  
Judith Nitsche, FCC (via e-mail)  
Rhonda Lien, FCC (via e-mail)  
Qualex International (via e-mail)

## APPENDIX A

- Alascom submitted versions of the CAP to the Commission as follows:
  - (a). Original CAP, August 29, 1994;
  - (b). Revised CAP, July 3, 1995; and
  - (c). Revised CAP, November 13, 1995.

See Alascom, Inc. Tariff FCC No. 11, Transmittal No. 790, Order, 11 FCC Rcd 3703, 3704-05 (Com. Car. Bur. 1995).
- In response to inquiries from the Bureau's staff, Alascom submitted documents in support of its CAP and tariff filings on November 29, 1995. The documents included:
  - (1). a description of Alascom's "Common Carrier Services Tariff Rate Development";
  - (2). Table of Alascom's Interstate Prospective Costs for 1996 (Table #2);
  - (3). Table 3 "Alascom Historical Demand," Table 4 "Alascom Prospective Demand Forecast" and Table 5 "Alascom 1996 Demand Forecast for Bush and non-Bush;
  - (4). Table containing information on Total Company Plant in Service expenses;
  - (5). Table containing information on Total Company Depreciation Reserve;
  - (6). Table containing information on Total Expenses;
  - (7). Table containing information on Total Depreciation Expenses;
  - (8). Tables containing information on CAP model, including model results.
- On November 30, 1995, Alascom submitted the following documents:
  - (9). Table on Network Demand by Non-Bush Location;
  - (10). Tables containing CAP Model results.
- On December 4, 1995, Alascom submitted the following documents:
  - (11). A description of Alascom's revised "Common Carrier Services Tariff Rate Development";
  - (12). Table containing Alascom's Demand Analysis;
  - (13). Tables containing Alascom's Alaska Terminating Demand, Originating Demand, and Total Alaska Demand;
  - (14). Table listing Non-Bush Demand by location;
  - (15). Chart of "Development of 1996 Bush and non-Bush Demand;
  - (16). Tables listing Total Company 1996 separation categories and amounts;
  - (17). Tables listing Total Company pro forma data;
  - (18). Tables showing implementation of Alascom's CAP model;
  - (19). Prospective Rate Information – Appendix D.
- In addition, Alascom submitted a diskette copy of the model implementing its revised CAP. (Item 20). See In the Matter of General Communications, Inc.: on Request for Inspection of Records, Memorandum Opinion and Order, 12 FCC Rcd 8484, App. A (1997).

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Alascom Petition for Waiver of the	)	WC Docket No. 03-18
Commission's Rules Regarding its Annual	)	
Tariff F.C.C. No. 11	)	

**PROTECTIVE ORDER**

**Adopted: January 21, 2003**

**Released: January 21, 2003**

By the Deputy Chief, Pricing Policy Division:

1. On January 7, 2003, Alascom, Inc. (Alascom or Applicant) filed a request for waiver of section 61.58(e)(3) of the Communications Act of 1934, as amended,<sup>1</sup> to allow it to continue offering current rates for its common carrier services without making the required annual rate revision.<sup>2</sup> In support of its petition, Alascom filed network usage information for which it seeks confidential treatment.<sup>3</sup> We authorize examination of the network usage information for which confidential treatment has been sought, subject to compliance with this Protective Order.

2. The information that Alascom marks as "proprietary" describes its network usage and in particular provides a detailed summary of network demand in minutes.<sup>4</sup> Alascom asserts that confidential treatment for this data is appropriate because the market for telephone service in the areas listed in the chart is highly competitive.<sup>5</sup> Alascom states that disclosure of this network usage information would cause Alascom substantial competitive harm because the data would allow competitors to assess Alascom's potential vulnerabilities or other market factors.<sup>6</sup> Alascom contends that it controls access to this data and the data has not been made public.<sup>7</sup>

<sup>1</sup> 47 U.S.C. § 214(a); *see also* 47 C.F.R. § 63.71.

<sup>2</sup> *Alascom, Inc. Request for Waiver of Commission Rule and Orders Requiring Annual Tariff Revision* (filed Jan. 7, 2003) (*Alascom Waiver Request*); *see also Pleading Cycle Established for Alascom, Inc. Petition for Waiver of the Commission's Rules Regarding its Annual Tariff F.C.C. No. 11*, WC Docket No. 03-18, Public Notice (Wireline Competition Bureau January 21, 2003).

<sup>3</sup> *See* Letter from Charles R. Naftalin, Counsel for Alascom, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Jan. 7, 2003) at 2 (*Alascom Confidentiality Request*).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

3. Pending a final determination on the issue of confidentiality, this network usage information will be made available for inspection subject to this Protective Order. This Protective Order should facilitate the orderly exchange of relevant information. We therefore adopt this Protective Order to ensure that the documents considered confidential or proprietary by Alascom are accorded the necessary protection.<sup>8</sup>

4. Subject to compliance with this Protective Order, Authorized Representatives may inspect the data specified above for which Alascom has requested confidential treatment in this proceeding by contacting the following Alascom representative:

Charles Naftalin  
Counsel for Alascom, Inc.  
Holland & Knight LLP  
2099 Pennsylvania Avenue, NW, Suite 100  
Washington, DC 20006  
(202) 457-7040

5. This Protective Order is intended to facilitate and expedite the review of documents containing trade secrets and commercial or financial information obtained from a person and which is privileged or confidential. It reflects the manner in which "Confidential Information," as that term is defined herein, is to be treated. This Protective Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

6. Definitions.

a. Authorized Representative. "Authorized Representative" shall have the meaning set forth in Paragraph 12.

b. Commission. "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

c. Confidential Information. "Confidential Information" means: (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets or commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4); (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information; and (iii) information that the Commission has allowed to be examined off-site and that otherwise complies with the requirements of this paragraph. Confidential Information includes additional copies of and information derived from Confidential Information.

<sup>8</sup> This Protective Order applies to the material designated as confidential in the *Alascom Confidentiality Request*, as well as material designated as confidential in any subsequent filings in this matter.

d. Declaration. "Declaration" means Attachment A to this Protective Order.

e. Reviewing Party. "Reviewing Party" means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.

f. Submitting Party. "Submitting Party" means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Protective Order.

7. Claim of Confidentiality. The Submitting Party may designate information as "Confidential Information" consistent with the definition of that term in Paragraph 6 of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 C.F.R §§ 0.459 and 0.461, determine that all or part of the information claimed as "Confidential Information" is not entitled to such treatment.

8. Procedures for Claiming Information is Confidential. Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, "CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION - DO NOT RELEASE." Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

9. Storage of Confidential Information at the Commission. The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court of competent jurisdiction.

10. Access to Confidential Information. Confidential Information shall only be made available to Commission staff, Commission consultants, and to counsel to the Reviewing Parties, or, if a Reviewing Party has no counsel, to a person designated by the Reviewing Party. Before counsel to a Reviewing Party or such other designated person may obtain access to Confidential Information, counsel or such other designated person must execute the attached Declaration. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement or if they execute the attached Declaration.

11. Counsel to a Reviewing Party or such other person designated pursuant to Paragraph 10 may disclose Confidential Information to other Authorized Representatives to whom disclosure is permitted under the terms of paragraph 13 of this Protective Order only after advising such Authorized Representatives of the terms and obligations of the Protective Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

12. Authorized Representatives shall be limited to:

- a. Counsel for the Reviewing Parties to this proceeding, including in-house counsel actively engaged in the conduct of this proceeding, and their associated attorneys, paralegals, clerical staff, and other employees, to the extent reasonably necessary to render professional services in this proceeding;
- b. Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; or
- c. Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

13. Inspection of Confidential Information. Confidential Information shall be maintained by a Submitting Party for inspection at two or more locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice (generally not to exceed one business day) during normal business hours.

14. Copies of Confidential Information. The Submitting Party shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty-five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for preparation and use in this proceeding. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

15. Filing of Declaration. Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.

16. Use of Confidential Information. Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review) unless otherwise ordered by the Commission or a court of competent jurisdiction, shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Protective Order. This provision shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

17. Pleadings Using Confidential Information. Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Protective Order must be clearly marked: "Confidential Information included pursuant to Protective Order in the Matter of Alascom, Inc. Petition for Waiver of the Commission's Rules Regarding its Annual Tariff F.C.C. No. 11, WC Docket No. 03-18."

d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal. They shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection c. of this paragraph is not removed.

18. Violations of Protective Order. Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The violating party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

19. Termination of Proceeding. Unless otherwise ordered by the Commission or a court of competent jurisdiction, within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made. Authorized representatives shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party and other attorney work product. Any Confidential Information contained in

any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with paragraphs 16 and 18 of this Protective Order unless such Confidential Information is released from the restrictions of this Protective Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

20. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of any privilege.

21. Additional Rights Preserved. The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

22. Effect of Protective Order. This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.

23. Authority. This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act, as amended, 47 U.S.C. §§ 154(i) and (j), section 0.457(d) of the Commission's rules, 47 C.F.R. § 0.457(d), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey H. Dygert  
Deputy Chief, Pricing Policy Division  
Wireline Competition Bureau

## Attachment A to Protective Order

## DECLARATION

In the Matter of )  
 )  
Alascom Petition for Waiver of the ) WC Docket 03-18  
Commission's Rules Regarding its Annual )  
Tariff F.C.C. No. 11 )

I, \_\_\_\_\_,  
hereby declare under penalty of perjury that I have read the Protective Order in this proceeding,  
and that I agree to be bound by its terms pertaining to the treatment of Confidential Information  
submitted by parties to this proceeding. I understand that the Confidential Information shall not be  
disclosed to anyone except in accordance with the terms of the Protective Order and shall be used  
only for purposes of the proceedings in this matter. I acknowledge that a violation of the  
Protective Order is a violation of an order of the Federal Communications Commission.  
I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed) \_\_\_\_\_

(name) \_\_\_\_\_

(representing) \_\_\_\_\_

(title) \_\_\_\_\_

(employer) \_\_\_\_\_

(address) \_\_\_\_\_

(phone) \_\_\_\_\_

(date) \_\_\_\_\_